IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 341 of 2002
With
CRIMINAL REVISION APPLICATION No. 343 of 2002
With
CRIMINAL REVISION APPLICATION No. 344 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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GUJARAT ELECTRICITY BOARD THRO'DY.EXECUTIVE ENGINEER O&M
Versus
GANPATHAI NATUBHAI ADMAR AND ANOTHER

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Appearance :
MR PREMAL R JOSHI for The Petitioner
MR RE VARIYAVA for Respondent No.1
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 28/12/2006

ORAL JUDGMENT

1. Gujarat Electricity Board (as it then was) is the petitioner before this Court in all these revisions

applications. It is the original complainant. The petitioner has filed FIRs, which was registered as II-C.R.No.94 of 1993, II-C.R.No.89 of 1993 and II-C.R.No.90 of 1993, that has resulted into Criminal Case Nos.607 of 1994, 603 of 1994 and 605 of 1994 respectively. The same were decided by the learned Judicial Magistrate, First Class, Mangrol, District Surat, by his judgment and order dated 11.01.2002. The learned Judicial Magistrate, First Class, Mangrol, District Surat passed order under section 248(1) of the Code of Criminal Procedure and acquitted the accused giving him benefit of doubt for the offence under sec.39 of the Indian Electricity Act, 1910.

2. Learned advocate for the complainant placed reliance on a decision of this Court in the matter of **State of Gujarat Vs. Bhemji Ranchodji Patala Thakore**, reported in 1999 (2) GLR 1767. The learned advocate relied upon the observations made by the High Court in para 13, which read as under:

> "The trial court has seriously erred in rejecting the evidence only on the ground that Panchas have not supported. The trial court ought to have taken into consideration admitted signatures on the panchnama. One of the panch has taken photographs of the line which are produced on record and that clearly shows that the panch was present. He has taken the photographs of the installation of the

> accused. It is to be presumed in view of sec.39, that until contrary is proved abstraction, consumption or use of energy has been dishonestly caused by such consumer. Accused has admitted in his statement that it was his electrical installation and prosecution evidence clearly reveals that by passing the meter, electricity was being abstracted from the overhead supply line of the Board by an unauthorised wire connecting the main with the private terminal of the accused. In view of this, the prosecution has discharged its duty in proving the case and the accused has failed in discharging his burden. In the circumstances, the impugned judgment and order passed by the trial court is quashed and set aside. The accused is held guilty of an offence punishable under sec.39 of the Electricity Act." (emphasis supplied)

From the aforesaid decision it is clear that even in absence of 'corroborating/ supporting' evidence of Panch, relying upon the evidence of the officers, accused can be convicted. That being so, only because the Panch has turned hostile, it is not necessary to acquit the accused.

3. Mr.Premal R.Joshi, learned Advocate for the petitioner submitted that in the present case, learned advocate for the accused could not cross examine the complainant. Right to cross examination is a valuable right. It is a matter of record that the accused could

not avail his valuable right of cross-examining the complainant, but then the same can be taken care of by asking the learned Judicial Magistrate, First Class, Mangrol, District Surat to see that after the remand the matter is proceeded in accordance with law and the accused is given an opportunity to exercise the right of cross examining.

4. Taking into consideration the aforesaid discussion, these Revision Applications are allowed. The judgments and orders passed by the learned Judicial Magistrate, First Class, Mangrol, District Surat is hereby quashed and set aside. Rule is made absolute.

The matters are remanded to the learned Judicial Magistrate, First Class, Mangrol, District Surat to proceed with the matters in accordance with law complying with all the procedural requirements, like cross examination of the complainant and other witnesses examined in support of the case of the prosecution which should be made available to the accused for cross examination.

5. Taking into consideration the fact that the matters are old enough, the learned Judicial Magistrate, First Class, Mangrol, District Surat is directed to give priority to the matters and decide the same on or before

30.04.2007.

Learned advocates appearing at the trial for the complainant and the accused shall extend full cooperation to the learned Judicial Magistrate, First Class, Mangrol, District Surat to see that the aforesaid directions are complied with.

(RAVI R. TRIPATHI, J.)

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